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Supreme Court of the United States

OCTOBER TERM, 1948

No. 282

ST. LOUIS AMUSEMENT COMPANY, ST. LOUIS AMBASSADOR THEATRE, INC., EDEN THEATRE COMPANY, *et al.*,

Petitioners,

vs.

PARAMOUNT FILM DISTRIBUTING CORPORATION, RKO RADIO PICTURES, INC., TWENTIETH CENTURY-FOX FILM CORPORATION, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENTS PARAMOUNT FILM DISTRIBUTING CORPORATION, RKO RADIO PICTURES, INC., TWENTIETH CENTURY-FOX FILM CORPORATION, and WARNER BROS. PICTURES DISTRIBUTING CORPORATION

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ALBERT C. BICKFORD,
GEORGE G. GALLANTZ,
of Counsel.

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Opinions Below

The opinion of the District Court is reported at 61 F. Supp. 854. The opinion of the Court of Appeals for the Eighth Circuit is reported at 168 F. (2d) 988.

Jurisdiction

The petition for writ of certiorari was filed on September 16, 1948. Jurisdiction of this Court is invoked presumably under § 1254(1) of the new Title 28, United States Code, effective September 1, 1948.

Statement

The United States District Court for the Eastern District of Missouri granted summary judgment against the petitioners in an action brought by them under the Sherman Act. The Court of Appeals for the Eighth Circuit affirmed unanimously. The issue arose out of compliance by respondents and others with the arbitration provisions of the consent decree entered by the United States District Court for the Southern District of New York in 1940 in *United States* v. *Paramount Pictures Inc., et al.* A contested decree entered in 1945 in that case was recently reviewed by this Court (334 U. S. 131).

The petitioners are the operators of most of the first run theatres in downtown St. Louis and many of the first run neighborhood theatres. In all, they have 31 prior-run motion picture theatres in the City of St. Louis. Their petition presents a very narrow question, viz., whether several motion picture distributing companies, which were required by that consent decree to submit to arbitration certain kinds of controversies arising out of their business operations, are liable to suit under Section 1 of the Sherman Act for the sole reason that each of them has abided by the awards made in arbitration proceedings held pursuant to and in conformity with that decree. That question was carefully considered and decided in the negative by both lower courts. The decision sought to be reviewed is not in conflict with any decision of this or any other court. Indeed, it is in complete accord with and was adumbrated by the language and holding of this Court in *United States* v. *Paramount Pictures Inc., et al.* (334 U. S. 131 [1948]), and the Court of Appeals in affirming, so held.

a. The Consent Decree in *United States* v. *Paramount Pictures Inc., et al.*

Section II of the consent decree in *United States* v. *Paramount Pictures Inc., et al.* provided: "Each consenting defendant, its successors, officers, directors, agents and employees, and all persons and corporations acting under, through, or for it, hereby is and are enjoined from doing the acts prohibited by this decree, and is and are directed to do the acts thereby required" (R. 30). Thus the decree directed each defendant individually, and not jointly, to comply with its terms. Collective action was neither directed nor contemplated, as the Attorney General had occasion to emphasize when that suggestion was made on behalf of the petitioners (R. 147).

Specifically, the consent decree dealt, among other things, with the subject of "clearance", i.e., "the period of time, fixed by agreement between a distributor and an exhibitor, prior to the expiration of which a feature licensed for prior exhibition in a theatre may not be exhibited in another theatre or theatres (R. 35n; 334 U. S., at p. 144, note 6).

Section VIII of the consent decree provided that: "Controversies arising upon the complaint of an exhibitor that the clearance applicable to his theatre is unreasonable shall be subject to arbitration under the following provisions:

> "It is recognized that clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures" (R. 35).

Specific standards were set up in the decree to guide the arbitrators in determining whether clearance was reasonable. (R. 35-36). Section VIII also provided: "The power

of the arbitrator in deciding any such controversy shall be limited to making (1) a finding as to whether or not the clearance complained of is unreasonable; and, if the finding be in the affirmative, (2) an award fixing the maximum clearance between the theatres involved which may be granted in licenses thereafter entered into by the distributor defendant which is a party to the arbitration" (R. 36).

Section XXII(1) of the decree provided that the procedure for the arbitration of such controversies was to be governed by a set of rules of arbitration attached to the decree (R. 51). Under the rules, any complainant demanding arbitration was required to name in his demand every exhibitor "whose business or property it is believed by the complainant may be affected by an award in the proceeding" (R. 60). The rules also contained provision for notice to such interested exhibitors and provisions entitling such exhibitors to intervene (R. 60-61). Section XXII(9) of the decree declared that any party so intervening should file a submission providing "that such intervenor submits to the arbitration and undertakes to abide by and to accept whatever final award may be entered therein" (R. 55).

The decree in Section VIII provided further: "Any distributor defendant or any exhibitor affected by such an award may institute a further arbitration proceeding for a modification thereof upon the ground that since the making of the award the conditions with respect to the theatres involved therein have so changed as to warrant modification, and, in the event that the arbitrator finds that there has been such change he shall make a redetermination of the maximum clearance" (R. 36-37).

The decree made decisions of the arbitrator subject to review by an Appeal Board and appointed the American

Arbitration Association—one of the respondents here—as administrator of the arbitration system (R. 52-53).

In 1944, the Government, as plaintiff in *United States* v. *Paramount Pictures Inc., et al.,* applied to the court for modification of the consent decree. Trial was had and on December 31, 1946 the court vacated the consent decree except in so far as necessary to conclude pending arbitration proceedings (66 F. Supp. 323; 70 F. Supp. 53). Together with its decree, the court filed a memorandum reading as follows (70 F. Supp., at p. 76):

> "The arrangement for arbitration and an appeal board has been terminated except as to unfinished litigations and other matters referred to in the decree, because of the unwillingness of some of the parties to consent to their continuance.* Nevertheless, as we have indicated in the opinion, these tribunals have dealt with trade disputes, particularly those as to clearances and runs, with rare efficiency, as both government counsel and counsel for other parties have conceded.
>
> "Indeed, the arbitration system set up under the consent decree of November 20, 1940, was created pursuant to the prayer of the amended and supplemental complaint by the United States filed November 14, 1940, in which, among other things, the plaintiff prayed that 'a nation-wide system of impartial arbitration tribunals or such other means of enforcement as the court may deem proper to be established pursuant to the final decree of this court in order to secure adequate enforcement of whatever general and nation-wide prohibitions of illegal practices may be contained therein'.

*The non-consenting parties referred to were the Government, and Columbia, Universal and United Artists, none of which is a party to the case at bar.

> "We strongly recommend that some such system be continued in order to avoid cumbersome and dilatory court litigation and to preserve the practical advantages of the tribunals created by the consent decree."

Upon appeal from that decree, this Court made the following comments with respect to the arbitration system (334 U. S., at p. 176):

> "The consent decree created an arbitration system which had, in the view of the District Court, proved useful in its operation. The court indeed thought that the aribtration system had dealt with the problems of clearances and runs 'with rare efficiency'. But it did not think it had the power to continue an arbitration system which would be binding on the parties, since the consent decree did not bind the defendants who had not consented to it and since the government, acting pursuant to the powers reserved under the consent decree, moved for trial of the issues charged in the complaint. The District Court recommended, however, that some such system be continued. But it included no such provision in its decree.
>
> "We agree that the government did not consent to a permanent system of arbitration under the consent decree and that the District Court has no power to force or require parties to submit to arbitration in lieu of the remedies afforded by Congress for enforcing the anti-trust laws. But the District Court has the power to authorize the maintenance of such a system by those parties who consent and to provide the rules and procedure under which it is to operate. The use of the system would not, of course, be mandatory. It would be merely an aux-

iliary enforcement procedure, barring no one from the use of other remedies the law affords for violations either of the Sherman Act or of the decree of the court. Whether such a system of arbitration should be inaugurated is for the discretion of the District Court."

b. Arbitration Proceedings Affecting Petitioners' Theatres.

Petitioners operated a number of first- and other early-run motion picture theatres in the city of St. Louis. The films exhibited in these theatres were obtained under licenses from the respondent motion picture distributing companies and others. Prior to 1942, these licenses provided for clearance in favor of petitioner's theatres over certain subsequent run theatres in the neighboring area. The independent operators of certain of these other theatres claimed that petitioners' clearance over their theatres was unreasonably long, and therefore they demanded arbitration under the consent decree. During 1942, 1943 and 1944, three arbitration proceedings were instituted in which certain of petitioners' theatres were named as theatres which might be affected by the proceedings:

In *Matter of Adolph Rosecan,* Case No. 20-3F-42, Adolph Rosecan, on April 9, 1942, filed a demand for arbitration in the St. Louis Arbitration Tribunal asking that the arbitrator fix the maximum clearance between complainant's theatre and the immediate prior run (R. 99). The demand for arbitration stated that the Gravois Theatre in St. Louis, operated by the petitioner St. Louis Amusement Company, might be affected by the award. St. Louis Amusement Company voluntarily intervened in that proceeding, signed and filed an agreement to abide by and to comply with

the award of the arbitrator, and participated in the hearings (R. 101-106), and in the subsequent appeal (R. 96-98). The decision of the Appeal Board was handed down on October 15, 1942 and sustained the existing clearance which petitioner's Gravois Theatre had over the complainant Rosecan's theatre (R. 114-120).

In *Matter of Apollo Theatre Corporation,* Case No. 20-2F-43, a demand for arbitration was filed in the St. Louis Tribunal on June 10, 1943 by the operator of the Apollo Theatre, which asked for an award fixing the maximum clearance which might thereafter be granted by the distributors named in the demand to the theatres having the run next prior to that of the Apollo (R. 106). At that time the Pageant Theatre, operated by the petitioner St. Louis Amusement Company, was receiving 14 days' clearance over the Apollo. St. Louis Amusement Company again voluntarily intervened in this arbitration proceeding (R. 108). In intervening, it again exercised the right granted to it by Section XXII(9) of the consent decree, and in compliance therewith it again filed a formal submission to arbitration, and again undertook to abide by and to comply with the award (R. 110). It participated in the proceedings before the arbitrator and also took part in the subsequent appeal from the arbitrator's award (R. 96, 120-131). The Appeal Board decision (R. 120) prohibited the distributors who were parties (including the respondents here), from thereafter, in future licenses, granting more than 7 days' clearance to the Pageant over the Apollo. Petitioners' claim for treble damages is based solely on the compliance by each of the respondents with this award.

In *Matter of Adolph Rosecan, d/b/a the Princess Theatre,* Case No. 20-1F-44, Adolph Rosecan filed a de-

mand for arbitration on August 10, 1944 (R. 94). In his demand he asked for an award directing that the clearance between his theatre and all prior runs should be reduced, and named various theatres, including first run theatres in downtown St. Louis which are operated by one or more of the petitioners, as theatres which might be affected by the award. As appears from the complaint (R. 7), none of the petitioners intervened in that proceeding, but they did present to the American Arbitration Association at St. Louis a petition objecting to the proceedings, and requesting that they be terminated. When the present suit was before the District Court in 1945, no testimony had as yet been taken in that arbitration proceeding (R. 91) and, so far as we are presently advised, the complainant therein has not prosecuted his complaint. No damage has therefore been caused and it is only through indulging in the wildest speculation that it can be assumed that this proceeding is a threat of imminent and irreparable damage to any of the petitioners.

c. The Proceedings Below.

In the complaint, the activities of the defendant American Arbitration Association in complying with the consent decree in *United States* v. *Paramount Pictures, Inc., et al* are characterized as being part of a combination and conspiracy in violation of the Sherman Act (R. 5). The acts of the independent exhibitor defendants (who are not respondents here), in filing demands for arbitration under the consent decree, are characterized as a joining of this alleged combination and conspiracy (R. 5, 6). The respondent distributors' acts in abiding by the terms and conditions of

the awards are alleged to be illegal as part of the alleged conspiracy (R. 4-5).

The relief asked includes treble damages and a decree enjoining the defendants from participating in arbitration proceedings relative to claims affecting petitioners' theatres. The damage claim is based entirely on the award of the arbitrator in the *Apollo Theatre Corporation* case (R. 5-6, 18), the case in which St. Louis Amusement Company, the only one of the petitioners involved, voluntarily intervened in the arbitration and agreed to be bound by and to comply with the award.

The District Court granted respondents' motion for summary judgment, holding that the District Court for the Southern District of New York had not exceeded its powers in establishing the arbitration system, and held further that, as a matter of comity, it would not review the acts of the coordinate court which had entered the consent decree (R. 245-253).

The Court of Appeals affirmed (168 F. [2d] 988) and in its opinion distinguished *Paramount Famous Lasky Corporation* v. *United States,* 282 U. S. 30 (1930) upon the ground that there, the court had found a combination and conspiracy not to license pictures to exhibitors refusing to arbitrate, whereas here, the sole basis of the complaint was the fact that the distributors had individually consented to be bound by a decree of a United States District Court (168 F. [2d], at p. 990). The Court of Appeals went on to quote from the language of this Court in *United States* v. *Paramount Pictures Inc., et al.,* and to point out that arbitration awards under the decree had not affected rights under existing contracts and are no bar to the exercise of any right under the Sherman Act.

> "But, as we have indicated, the refusal, during the time the consent decree was in effect, of such dis-

tributors as had been party to an arbitration proceeding on a clearance period, under a complaint filed by some exhibitor, of which plaintiffs were given notice and had an opportunity to intervene, to agree with plaintiffs on a longer clearance against the theatre of the complaining exhibitor than that fixed in the arbitration award, could not, without more in the situation, in view of the prohibition of the decree, be claimed to constitute an actionable combination or conspiracy under the statute" (168 F. [2d], at p. 992).

Summary of Argument

The District Court had power to authorize arbitration by motion picture distributors who consented to it. While arbitration could not be made mandatory in the absence of consent, its authorization by a court would be meaningless unless those consenting could respect and comply with the awards of the arbitrators without violating the law and exposing themselves to the danger that their mere act of compliance would lay them open to suits under the Sherman Act. The establishment of the arbitration system did not involve any abdication of the District Court's constitutional judicial power. It merely established "an auxiliary enforcement procedure, barring no one from the use of other remedies the law affords for violations either of the Sherman Act or of the decree of the court" (334 U. S., at p. 176).

Petitioners here, however, did not choose to pursue other remedies and voluntarily became party to and participated in the only arbitration which has resulted in an award prescribing the maximum clearance which one of their theatres could thereafter enjoy over its competitors. They cannot, therefore, be heard to complain of the respondents'

compliance with that award. In no other arbitration proceeding have any of the petitioners been affected. The injunction sought against the inception of any such proceeding would, if granted, emasculate the arbitration system.

It is well settled that broad consent decrees are within the power of courts which have jurisdiction of equity suits to enjoin violations of the anti-trust laws. The consent decree here questioned is not subject to collateral attack upon the ground that the Attorney General erred in consenting to it or upon any of the other grounds asserted by petitioners.

ARGUMENT

I.

THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK HAD POWER TO ENTER THE CONSENT DECREE AND TO AUTHORIZE ARBITRATION. PETITIONERS MAY NOT PREDICATE A CAUSE OF ACTION UPON RESPONDENTS' COMPLIANCE WITH THAT CONSENT DECREE.

The complaint in this action falls logically into two subdivisions. In the first, one of the petitioners, St. Louis Amusement Company, claims to have suffered damages from an award in an arbitration proceeding to which it voluntarily became a party and in which it fully participated and agreed to be bound by the result. Although the arbitration system provided it with a forum in which to seek a modification of the award (consent decree, Section VIII, quoted *supra*, p. 4), there is no allegation in the com-

plaint that it availed itself of this relief, and the fact is that is did not. The other petitioners were not and could not have been affected as, so far as the record shows, they had no legal interest in the theatre involved.

In the second, the petitioners' theory is that they are entitled to an injunction against an arbitration proceeding in which the arbitrator has as yet taken no steps other than to receive a complainant's demand for arbitration and to schedule the complaint for a hearing. Although the hearing was scheduled to take place some three years ago, the complainant has not pressed it and it has not been held.

In passing on both theories of the complaint, the Court of Appeals correctly looked to the decision of this Court in *United States* v. *Paramount Pictures Inc., et al.,* 334 U. S. 131 (1948). In that case, the Court had before it some phases of the very consent decree which is here involved. One of the questions before this Court was whether the District Court in New York had the power to authorize arbitration by those consenting to it. The Court squarely held that the District Court had such power, and thus disposed of the contention now made by the petitioners that authorization of the arbitration system was beyond the power of the court.

In so holding, this Court also noted that the use of the system was not mandatory, and that the consent decree barred no one from the use of other remedies afforded by the anti-trust laws. It, of course, did not suggest what is now suggested by the petitioners: that compliance with the awards of the arbitrators, individually by each distributor against whom the award was made, constitutes a conspiracy giving rise to additional and new remedies under the anti-trust laws.

Since, as this Court held, the arbitration system could be lawfully established, it follows that the awards of the arbitrators must be binding on all those who submit to their authority and who participate in the proceedings before them. The language and holding of this Court would be meaningless if those who seek to take advantage of the proceedings before these tribunals could then assert that compliance with the impartial award which resulted from those very proceedings was a basis for a charge of conspiracy in violation of the Sherman Act.

These respondents have never contended, and the courts below did not hold, that petitioners were required to make use of the arbitration procedure or that the availability of the procedure deprived them of the use of other remedies. The system, however, having been lawfully created, the arbitrators must be permitted to entertain complaints under the provisions of the consent decree and to proceed to an impartial determination of the merits of these complaints. Yet the petitioners—apparently anticipating an adverse decision on the merits—would have this Court permanently enjoin the operation of the system at its inception. And that result is sought to be justified merely because it is probable that the respondent distributors will abide by any award made by the arbitrators. To permit the system to be established without permitting the distributors to abide by these awards would render the entire process nugatory and it is fair to assume that that was not the intent of this Court when it discussed arbitration in the *Paramount Pictures* case.

It should also be remembered that the entire question of whether a method of arbitration should be permanently established is now before the statutory three-judge District

Court in New York under this Court's remand. The opinion in the *Paramount Pictures* case expressly left that question to the trial court's discretion. This furnishes another reason for denying the writ now sought by the petitioners. The entire purpose of this Court's remand on this question would be subverted if, by means of this collateral attack on the power of the District Court, the operation of the arbitration system were to be enjoined.

Even before the *Paramount Pictures* case had reached this Court, District Judge Duncan, in granting the respondents' motion for summary judgment in the court below, refused, on the grounds of comity, to interfere with the operation of the consent decree entered by the District Court in New York (R. 250), citing *Torquay Corporation* v. *Radio Corporation of America,* 2 F. Supp. 841 (SDNY, 1932). As to this proposition, see also *Chicago Pneumatic Tool Co.* v. *Hughes Tool Co.,* 61 F. Supp. 767 (D. C. Del., 1945), aff'd on other grounds, 156 F. (2d) 981 (CCA 3, 1946), cert. den., 329 U. S. 781 (1946); *In re Sierra Salt Corporation,* 8 F. Supp. 922, 925 (D. C. Nev., 1934); *The Don,* 1 F. Supp. 353 (DCNJ, 1932).

While, in our view, considerations of comity were in themselves sufficient ground for the decisions of the courts below, those considerations are now reinforced by the fact that the District Court in New York must now, under the mandate of this Court, consider anew the entire question of establishing an arbitration system, and it would seriously hamper its deliberations if this suit questioning its powers and seeking to enjoin compliance with its earlier direction, were still pending in Missouri.

II.

CONSENT DECREES GENERALLY ARE NOT SUBJECT TO COLLATERAL ATTACK UPON THE GROUND THAT THE ATTORNEY GENERAL ERRED IN CONSENTING TO THEM OR UPON ANY OF THE OTHER GROUNDS ASSERTED BY PETITIONERS.

In their approach to the issues raised by this petition for a writ of certiorari, the petitioners persist in refusing to accord proper weight to the vital fact that the consent decree here in question was approved by the chief law enforcement officer of the Government.

Although consent may not broaden the jurisdiction of a court, it permits the court to approve relief within that jurisdiction which it might otherwise be unwilling or unable to grant without consent.*

Petitioners' complaint (R. 8) attacks, and their brief challenges, the consent decree because of its alleged failure to prevent the restraints alleged in the Government's complaint and, instead, as it is asserted, authorizes and requires the respondents to engage in a conspiracy and in unlawful restraint.

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*An illustration of this distinction is furnished by the unwillingness of the Supreme Court in *Hartford-Empire Co.* v. *United States,* 323 U. S. 386, 413-417 (1945), where a consent decree was not before it, to grant compulsory royalty-free licenses, as the Government had requested. Yet Federal courts have repeatedly approved consent decrees containing such a provision. See *United States and Alien Property Custodian* v. *Merck & Co. Inc., et al.* (D. C. N. J. Oct. 1945) C. C. H. Trade Reg. Serv., 1944-47 Supp. Par. 57,416; *United States* v. *Auditorium Conditioning Corp. et al.* (S. D. N. Y. Dec. 1945), C. C. H. Trade Reg. Serv., 1944-47 Supp. Par. 57,428.

These allegations not only are untrue, but they point up the essential difficulty with the maintenance of this action, and show that it is a collateral attack upon the validity of a decree of a court of coordinate jurisdiction. In so far as the petitioners challenge the efficacy of the decree, they are merely asserting a difference between their opinion and the opinion of the District Court in New York and the Attorney General as to what relief was appropriate at the time the decree was entered. But the Sherman Act charges the Attorney General and the court, and not the petitioners, with the responsibility of making that decision, and *Swift & Co.* v. *United States,* 276 U. S. 311 (1928) puts a decree entered upon consent of the Attorney General beyond such criticisms of inadequacy. Even were the criticisms well founded, or if the Attorney General had subsequently changed his mind, the consent then given was definitive at least until proceedings to vacate or modify the decree were brought. A consent decree is not void because another Attorney General or a citizen would have preferred a different method of treatment or cure.

The consent decree, entered by a court which had jurisdiction of both the parties and subject matter contains provisions directly related to the charges in the Government's complaint. Its entry, as the court below properly found, was plainly an exercise of the court's jurisdiction to prevent violations of the Sherman Act.

In the *Swift* case the court squarely held "that an injunction may issue to prevent future wrong, although no right has yet been violated" (p. 326) and that there need be no findings of facts showing violations of the anti-trust laws as a condition precedent to the entry of a valid consent decree (p. 327).

The further contention was made in the *Swift* case, and the same argument is again made here, that the consent decree was void because it obliged the defendants to abandon completely certain businesses and methods of doing business, which were not inherently unlawful, and that such a decree was not merely unauthorized, but was contrary to the common law and the Anti-Trust Act (p. 330). The court rejected that contention saying:

> "* * * But the court had jurisdiction of the subject matter and of the parties. And even gross error in the decree would not render it void. Compare *Ex parte Watkins,* 3 Pet. 193; *Ex parte Parks,* 93 U. S. 18; *In re Coy,* 127 U. S. 731, 756" (p. 330).

In the *Swift* case it was further argued that the power to issue an injunction was limited by the scope of the transactions prohibited by Sections 1, 2 and 3 of the Anti-Trust Act (p. 329), and that the decree was void because the Attorney General had no power to agree to a decree by which citizens of the United States were prohibited absolutely and forever from engaging in lawful businesses (p. 331). These contentions, inherent in petitioners' arguments here, were all rejected by this Court (276 U. S. 311, 329, 331-2). The *Swift* decision thus furnishes a complete answer to petitioners' contentions with respect to the consent decree attacked here. Its validity is beyond question and the courts below were bound to dispose of this case as they did.

There appears to be a suggestion in the petitioners' brief to the effect that the consent decree and the arbitration system affects the terms of existing contracts. That contention was fully treated by the Court of Appeals (168 F. [2d], at pp. 991-992). The Court of Appeals there quoted

from Section VIII of the consent decree, the language which we have quoted *supra,* pp. 3-4, and concluded that: "It was not possible therefore to touch rights under existing contracts and, as the opinion of the Supreme Court points out, there was no bar to the exercise of any right under the Sherman Act for wrongs which had been done."

While the power of a court under the Sherman Act to disregard, under certain circumstances, the letter and legal effect of contracts in order to achieve the purposes of the law, cannot be questioned (*Continental Co.* v. *United States,* 259 U. S. 156, 171 [1922]), the record here is entirely clear that the arbitrators had no power to interfere with the terms of existing contracts, and that they never did interfere or threaten to interfere with such contracts. That suggestion of the petitioners is therefore also wholly without merit.

CONCLUSION

For the reasons indicated, the petition for a writ of certiorari raises no questions which merit consideration by this Court, and it should be denied.

Respectfully submitted,

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October 6, 1948.